IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ramesh Prakash v. Raj. Public Service Commission

SBCIVIL WRIT PETITION NO.5888/2003
under Article 226 of the Constitution of India.

Date of Order :: 6th September, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. J.P.Joshi]
Mr. Tarun Joshi] for the respondent.

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BY THE COURT :

Reportable

Precisely the issue involved in this petition for writ is that whether the experience gained by an incumbent as Laboratory Assistant can be considered as "Teaching Experience" required for the purpose of appointment to the post of Headmaster, Secondary Schools, eligibility for that as per the Rajasthan Educational Service Rules, 1970 (hereinafter referred to as "the Rules of 1970"), is as follows:-

> "1.(a)Bachelors Degree with a degree or diploma in Education. (b)Experience of Teaching High/Jr.Hr.Sec./Hr.Sec. Classes for 5 years or experience of Administrative

charge of Middle Schools for 4 years, and of teaching High/Jr.Hr.Sec./Hr.Sec. Classes for 3 years."

The candidature of the petitioner to be considered for appointment as Headmaster, Secondary School, stood rejected by respondent Rajasthan Public Service Commission by ignoring the experience gained by him as Laboratory Assistant for a period of five years 9 months and 10 days as per the letter dated 6.10.2003 issued by the Assistant Secretary of the Commission. Being aggrieved by the same this petition for writ is preferred claiming the relief as under:-

"(1)the impugned order/letter Annx.P/4 dated 06th October, 2003 may kindly be quashed and set aside, with all consequential benefits and reliefs, as if it was never passed against the petitioner;

(2)without prejudice to above, the respondents may kindly be directed to treat the petitioner eligible, having requisite 'teaching experience' of more than 5 years, for direct recruitment on the post of Headmaster, Secondary School; with all consequential benefits and reliefs to the petitioner, as if the petitioner was never denied the same;

(3)in case during pendency of the writ petition, process of selection is over, the respondents may kindly be directed to conduct special interview for the petitioner, treating him eligible to be considered for

appointment on the post of Headmaster, Secondary School through direct recruitment;

(4)the respondents may also kindly be directed to provide appointment to the petitioner with effect from the date when other similarly situated persons were appointed, as if he is never denied the same, with all consequential benefits and reliefs."

To substantiate the claim the contentions of the counsel for the petitioner are as under:-

(1)the post of Laboratory Assistant is part of the Rajasthan Educational Subordinate Service created under the Rajasthan Educational Subordinate Service Rules, 1971 (hereinafter referred to as "the Rules of 1971") and is shown in Section "F" of the Schedule appended with the Rules that relates to the category of general teachers, as such a Laboratory Assistant is a "teacher" under the Rules of 1971;

(2)as available to the teachers an avenue for promotion is also available to a Laboratory Assistant for the purpose of promotion to the post of Senior Teacher under the Rules of 1971 that indicates the intention of the legislature to consider Laboratory Assistants as Teachers, hence the experience gained by a Laboratory Assistant in that capacity is nothing but teaching experience; and

(3)a Laboratory Assistant is imparting instructions to the students in laboratory while teaching practical aspects of science

> subjects. The Laboratory Assistant, therefore, is a teacher and duties discharged by him are “teaching”.

Per contra, in reply to the writ petition the respondent Commission contended that the Laboratory Assistant is neither a teacher nor his duties are of “teaching” while working in laboratory, therefore, there is no question of having teaching experience. The relevant portion of the reply to the writ petition reads as follows:-

> “3.That it is admitted case of the petitioner that he did not hold the post of a Teacher during the period 17.02.1992 to 07.11.1997 and thereafter he started working as a teacher from 08.11.1997 only. The last date as mentioned in the advertisement was 03.05.2002 and period of 5 years teaching experience was to be counted upto 03.05.2002 only. If the said period is counted then, as stated above, it comes to 4 years 5 months and 25 days only and thereby he cannot be said to have required teaching experience of 5 years on the last date of submission of the application form. It is not the case of the petitioner that while working as a Lab Assistant he was also assigned a teaching work nor it is the policy of the Education Department to assign the teaching work to the persons working on the post of Lab Assistant. Since the petitioner worked on the post of Lab Assistant from 17.02.1992 to 07.11.1997 and has not worked as a Teacher, therefore, said period cannot be counted as teaching

experience and if the period during which he worked as a teacher is counted then it is less than 5 years and, therefore, he cannot be said to have possessed requisite 5 years teaching experience. In view of the above facts the petitioner was not possessing the requisite 5 years teaching experience and therefore, his candidature was rightly rejected by the answering respondent.

4.That there is no notification or circular either from the Education Department or from the State Government that the persons working on the post of Lab Assistant will be deemed to have teaching experience while discharging the functions of a Lab Assistant. In the absence of any such notification either from the Education Department or from the State Government, it cannot be said that a Lab Assistant possesses a requisite teaching experience. Moreover the Rajasthan Educational Subordinate Service Rules do not envisage a situation where a person working on the post of Lab Assistant will be deemed to have acquired teaching experience."

Heard counsel for the parties.

Neither the term "teacher" nor "teaching experience" is defined or interpreted under the Rules of 1970 or 1971. In view of it whether a Laboratory Assistant is a teacher and he acquires teaching experience while discharging the duties as Laboratory Assistant is to be settled on basis of statutory provisions of the Rules of 1970 and 1971 with the

scheme of studies upto secondary school level and the duties of a Laboratory Assistant.

The first two contentions of the petitioner mainly pertain to placement and status of a Laboratory Assistant under the Rules of 1971. The Governor of Rajasthan while exercising powers under proviso to Article 309 of the Constitution of India framed the Rules of 1971 to regulate recruitment and other service conditions of service of persons appointed to Rajasthan Educational Subordinate Service.

According to Part-II of the Rules of 1971 the Rajasthan Educational Subordinate Service created under the Rules of 1971 consists of posts as arranged in various sections specified in Schedule appended with the Rules. The right of promotion under the Rules of 1971 is confined to each section and no member can be transferred from one section to another section. The strength of the cadre in each section is required to be determined by the Government of Rajasthan time to time. The Schedule appended with the Rules of 1971 have six sections, those are Sections “A” to “F”. Section “A” to Schedule relates to various posts of Librarians, Section “B” relates to Physical Training Instructors, Section “C” relates to Craft Teachers, Section “D” relates to Music Teachers, Section “E” prescribes for Drawing Teachers and Section “F” pertain to General Teachers. The post of Laboratory

Assistant with certain other posts is part of Section “F” of the Schedule appended with the Rules of 1971.

As stated above, according to Part-II (Rule 4 of the Rules of 1971) the promotions to higher posts under the Rules of 1971 are confined to each section. In view of it a person holding a post under Section “F” cannot be promoted to a post in any other section of the Schedule and similarly no person belonging to other sections can be promoted to a post prescribed in other sections of the Schedule. This clearly shows that the legislature classified various posts under the Rules of 1971 in different sections on basis of homogeneity of working and nature of duties. The placement of Laboratory Assistants and Teachers in Section “F” that relates to the category of General Teacher prima facie proves a similarity and homogeneity in nature of duties and working of these posts. What it appears from perusal of Section “F” is that the legislature considered Teacher as well as Laboratory Assistant as same genus and categorised both of them as general teacher. The intention of the legislature become more clear from the fact that the Laboratory Assistant as well as a teacher are having an avenue for promotion to the post of Senior Teacher, a post prescribed in Section “F” of the Schedule appended with the Rules of 1971. It is pertinent to note that a senior teacher is required to teach secondary level classes and the recruitment to that

post is prescribed by way of direct recruitment as well as by way of promotion. The placement of Laboratory Assistants and the Teachers in a common feeding channel for promotion to the post of Senior Teacher establishes it well that the legislature intended to treat a teacher and a Laboratory Assistant with qualification of B.Ed./B.S.T.C. at par.

As stated above a senior teacher is required to teach secondary classes, therefore, the feeding channel is from the posts having the job of teaching. Pertinent to note here that no avenue for promotion as senior teacher is given to the person discharging administrative duty. This indicates that working of Laboratory Assistant may be in a different fashion or style then the regular class room teaching but that is the work of a teacher and, therefore, the experience gained by a teacher and Laboratory Assistant is kept at same pedestal while considering candidature of the persons for the purpose of promotion to the post of Senior Teacher. The scheme of the Rules of 1971 in view of the discussion above treat a Laboratory Assistant as a teacher.

The issue under consideration can also be examined by analysing the nature of duties discharged by a Lab Assistant.

The term “teacher” as defined under Webster's Third New International Dictionary means one that teaches or instructs, one whose occupation is to instruct. According to the New Shorter Oxford English Dictionary “teacher” is one who teaches or instructs. The Black's Law Dictionary defines “teacher” as one who teaches or instructs, especially one whose business or occupation is to teach. In view of the definitions above the teaching is the prime ingredient to be a teacher.

The term “teaching” as defined under the Black's Law Dictionary is to impart knowledge by means of lessons, to give instruction in communicating knowledge, introducing into or impressing on the mind as truth or information and may be done as well through written communications, persons direction, through the public press or through any means by which information may be disseminated. The same term as defined under the New Shorter Oxford English Dictionary mean to impart information about or the knowledge of a subject or skill giving instruction, training, or lessons in a subject, impart information or knowledge to educate, train or instruct a person. According to Webster's Third New International Dictionary “teaching” means to accustom to some action or attitude, guide the studies, conduct through a course of studies, impart the knowledge in a class room or discussion, to direct, instruct or train by

precept and practice. To summarise the term “teaching” mean imparting instructions to enrich information, knowledge and skill and to train a person or group thereof to develop and promotion of knowledge and skill.

It is to be seen by examining duties of a Laboratory Assistant that as to whether he is imparting instructions to the students to enrich their knowledge and information with a view to train them and to develop their skill. The petitioner has placed on record a set of syllabi prescribed for 9th and 10th classes (classes pertaining to secondary school examination), according to that the students of the classes concerned are required to go for practical education also with theoretical knowledge of the subject. The examinations for class 10th are designed to provide an examination in a course of general education in accordance with the recommendations of New Education Policy, 1986. In all subjects other than science and computers students must submit compulsory course work assignments. In science subjects the students are required to undergo practical knowledge of the subject also. The subjects taught in 9th and 10th standards are divided in three groups, out of that Group-II prescribes for science subjects also. The subject of a science includes physics, chemistry and biology with laboratory classes in all three. The prescription of the laboratory classes emphasise for

practical knowledge of science to the students. A Laboratory Assistant according to the duties assigned is incharge of the laboratory and also instructs students in laboratory classes.

In Biology laboratory a Laboratory Assistant is a guide, instructor and teacher for the students undertaking practicals of Zoology as well as in Botany. He is also required to make the students acquaint with the equipments such as microscope, scissors, niddles, slides, razors, preservatives etc. From perusal of syllabi placed on record it is apparent that in various chapters pertaining to the practical examinations a Laboratory Assistant working in Biology Lab is to instruct the students with regard to various parts of plants, various parts of flowers, stems, roots. He is also required to provide necessary training for preparing slides to examine cell structure. Similarly, in Chemistry Lab a Laboratory Assistant is required to train the students with the equipments such as burate, pipette, test tubes, burners and also with process of titration and various chemical reactions. In a Chemistry Lab the Laboratory Assistant is also required to instruct the students of 10^{th} standard with regard to process of separation of mixtures, distillations etc. In Physics Laboratory according to syllabi prescribed for the classes upto secondary level a Lab Assistant beside giving the knowledge of various equipments is required to

instruct the students about undertaking practicals pertaining to measurements, formation of images, the electricity and electronic circuits etc.

The general teachers are imparting instructions in class rooms whereas according to the duties prescribed a Laboratory Assistant instruct the students and impart knowledge of the subject to the pupil in laboratory. The method of instructing by a Laboratory Assistant is certainly different than a teacher teaching theory in class room but in any case a Laboratory Assistant is instructing the students in laboratory to enrich information and knowledge of the subject concerned and that is part of clinical method of teaching. The Laboratory Assistant, therefore, is involved in teaching, hence, whatever experience acquired by him while imparting duties in a laboratory is certainly a teaching experience. In view of it the respondent Commission erred while ignoring the teaching experience acquired by the petitioner while discharging the duties as Laboratory Assistant.

Accordingly, this petition for writ deserves acceptance, hence is allowed. The respondents are directed to consider the candidature of the petitioner for the purpose of appointment to the post of Headmaster, Secondary School and in the event of his selection appointment be given to him from the date it was accorded to other similarly situated persons. The

candidature of the petitioner as a matter of fact was considered by the respondents in pursuant to an interim order passed by this Court on 16.10.2003. The respondents, therefore, are required to declare result of that. In case of his appointment the petitioner shall not be entitled for any wages in actual, however, he shall be entitled for notional benefits.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.